S.B. CIVIL WRIT PETITION NO.3432/2005

Devi Lal. Vs. Civil (JD) City (South), Udaipur & Ors.

Date : 5.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the petitioners.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 25.5.2005 by which the trial court instead of inspecting the site itself, appointed a Commissioner to inspect the site and furnish the report.

Learned counsel for the petitioner submits that the Commissioner was appointed on earlier occasion in proceedings under Order 39 Rules 1 and 2 C.P.C. and thereafter, this application has been filed in the civil original suit.

According to learned counsel for the petitioner, this is nothing but seeking collection of evidence through Court Commissioner which is impermissible.

According to learned counsel for the petitioner, it is settled law that the Commissioner cannot be permitted to collect the evidence and to support this argument, learned counsel for the petitioner relies on a judgment of this Court delivered in the case of Union of India and another

vs. M/s. Kripal Industries, Raisingh Nagar reported in 1998 (2) WLC (Raj.) 396.

I have considered the submissions of learned counsel for the petitioner. It appears from the facts of the case that in the suit, an application for grant of temporary injunction was submitted. A Commissioner was appointed who submitted his report and thereafter, an application has been filed under Order 18 Rule 18 CPC and it was requested that the Court itself may see the site because the other party is changing the situation and has started growing the trees and removing fencing (dhora) and has constructed the wall so that the plaintiff may not reach to his well. It appears that the trial court which has been given power to inspect the site and has also given power under the provisions of CPC to appoint the Commissioner for passing appropriate orders during the pendency of the suit has instead of inspecting the site itself, appoint the Commissioner to keep the actual position on record which according to the plaintiff has been changed by the other party after receipt of first Commissioner's report. In these circumstances, it cannot be said that this is an order appointing Commissioner to collect the evidence.

It is also true that the photographs can also be produced but it cannot be said that the Court has no jurisdiction to appoint the subsequent Commissioner to find out whether there is any change on spot during the pendency of the suit.

Since the Court has exercised the jurisdiction within the power for passing appropriate order and the petitioner has ample opportunity to challenge the subsequent commissioner's report also by filing objections, therefore, this court is not inclined to interfere in the impugned order.

In view of the above discussion, this writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya